



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

HENRY EARL MILLER,
Petitioner,

vs.

WARDEN OF FCI-YAZOO CITY,
Respondent.

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CIVIL ACTION NO. 6:09-3162-HFF-WMC

ORDER

This case was filed as a 28 U.S.C. § 2241 action. Petitioner, an inmate in the Federal Correctional Institution in Yazoo City, Mississippi, is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the § 2241 petition for a writ of habeas corpus in this case be dismissed without prejudice and without service upon the Respondent. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 10, 2010, but Petitioner failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Even if the Petition has merit (it does not), the Court is required to dismiss this action without prejudice. This is so because the Court does not have personal jurisdiction over the Warden of the Federal Correctional Institution in Yazoo City, Mississippi, such that the Court could require the Warden to effectuate its Order if that Order granted Petitioner his requested relief. Thus, the Court will dismiss the Petition without prejudice on this basis.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report to the extent that it comports with this Order, and incorporates it herein. Therefore, it is the judgment of the Court that the § 2241 petition for a writ of habeas corpus in this case be **DISMISSED** without prejudice and without service upon the Respondent.

This Court declines to issue a certificate of appealability as Petitioner has failed to make a substantial showing of the denial of a constitutional right. Thus, to the extent that Petitioner requests such a certificate, that request is **DENIED**.

IT IS SO ORDERED.

Signed this 8th day of March, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.